

Message Text

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PAGE 01 STATE 097353
ORIGIN COME-00

INFO OCT-01 EUR-12 NEA-10 ISO-00 EB-08 SIG-03 TRSE-00
CIAE-00 INR-10 NSAE-00 STR-07 L-03 OMB-01 /055 R

DRAFTED BY COM/BED/CAGNE/JHEARN:E
APPROVED BY EB/OCA/CD:REDAY
PBHALE/BED/CAGNE
KKNOWLES/AGC/ITA
SJMARCUS/DAS/TR
DMORRISON/NEA/RA/STATE
NEA/RA:DMORAN (DRAFT)
-----034686 151656Z /65

R 150340Z APR 78
FM SECSTATE WASHDC
TO USINT BAGHDAD
INFO AMEMBASSY ABU DHABI
AMCONSUL ALEXANDRIA
AMEMBASSY AMMAN
AMEMBASSY ATHENS
AMEMBASSY BEIRUT
AMEMBASSY CAIRO
AMEMBASSY DAMASCUS
AMCONSUL DHAHRAN
AMEMBASSY DOHA
AMEMBASSY JIDDA
AMEMBASSY KUWAIT
AMEMBASSY MANAMA
AMEMBASSY MUSCAT
AMEMBASSY SANA
AMEMBASSY TRIPOLI

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E.O. 11652: N/A

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PAGE 02 STATE 097353

TAGS: PFOR, IZ

SUBJECT: FOREIGN BOYCOTTS: EAA REGULATIONS

REF: (A) BAGHDAD 436; (B) BAGHDAD 438; (C) BAGHDAD 446;
(D) STATE 40439

1. FOLLOWING GUIDANCE IS PROVIDED WITH RESPECT TO QUESTION LISTED PARA 10, REF (A):

A. USINT INTERPRETATION OF EAA REGULATIONS AS THEY RELATE TO PERMITTED RESPONSE BY U.S. PERSON TO FALSE BOYCOTT ACCUSATIONS IS CORRECT. IF ALLEGATIONS OF VIOLATIONS OF BOYCOTT RULES ARE MADE PUBLICLY OR COMMUNICATED TO U.S. PERSON, SUCH PERSON MAY STATE GENERALLY THAT SUCH ALLEGATIONS ARE WITHOUT FOUNDATION, OR MAY DENY THAT IT HAS VIOLATED LAWS AND REGULATIONS OF BOYCOTTING COUNTRY. U.S. PERSON MAY NOT, HOWEVER, PROVIDE INFORMATION ABOUT EXISTENCE OR NON-EXISTENCE OF BUSINESS RELATIONSHIPS WITH BOYCOTTED COUNTRY IN RESPONSE TO SUCH ALLEGATIONS.

B. LOCAL BRANCH OF U.S. FIRM WHICH IS BONA FIDE RESIDENT OF BOYCOTTING COUNTRY MAY COMPLY WITH LOCAL LAW REQUIREMENTS OF EXTENT OF PROVIDING INFORMATION ABOUT ITS OWN ACTIVITIES OR THOSE OF PARENT COMPANY ONLY INsofar AS SUCH

INFORMATION CAN BE SUPPLIED FROM THE LOCAL BRANCH'S OWN KNOWLEDGE. SUCH INFORMATION MAY NOT REPEAT MAY NOT BE CHanneled THROUGH LOCAL BRANCH BY PARENT COMPANY IN U.S. NOR MAY LOCAL BRANCH SEEK SUCH INFORMATION FROM PARENT COMPANY IN ORDER TO PREPARE RESPONSE TO BOYCOTT OFFICE REQUEST. BASIC GUIDANCE THIS REGARD PROVIDED IN EXAMPLES THREE THROUGH FIVE (ROMAN) ON PAGE 41 OF EXPORT ADMINIS- LIMITED OFFICIAL USE

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PAGE 03 STATE 097353

TRATION BULLETIN NUMBER 174 DATED JANUARY 30. DEPARTMENT WISHES POINT OUT THIS CONNECTION THAT ABDUL HAMEED'S COMMENT REPORTED PARA 5 REF (A) TO EFFECT ONE ARAB COUNTRY COULD GET INFORMATION FROM U.S. FIRM'S LOCAL BRANCH IN ANOTHER ARAB COUNTRY IS INCORRECT. LOCAL LAW COMPLIANCE EXCEPTION WHICH PERMITS FURNISHING OF INFORMATION BY U.S. PERSON RESIDENT IN BOYCOTTING COUNTRY--SECTION 369.3(F-1), PAGE 40, EXPORT ADMINISTRATION BULLETIN NUMBER 174--APPLIES ONLY TO ACTIVITIES "EXCLUSINVELY WITH- IN THE BOYCOTTING COUNTRY." FURNISHING OF INFORMATION BY U.S. FIRM'S LOCAL BRANCH IN ONE COUNTRY TO PERSONS IN ANOTHER COUNTRY WOULD NOT BE AN ACTIVITY EXCLUSIVELY WITH- IN THE COUNTRY OF RESIDENCE AND THUS IS NOT COVERED BY LOCAL LAW COMPLIANCE EXCEPTION.

C. RE RISK OF LOSS CLAUSES WHICH PUT TRANASACTION ON "DELIVERED IN COUNTRY" BASIS: U.S. PERSON'S INITIATION OF SUCH CLAUSES AFTER EFFECTIVE DATE OF REGULATIONS (JANUARY 18) CREATES PRESUMPTION (REBUTTABLE) THEY USED FOR PURPOSES OF EVASION. HOWEVER, EAA PROVISIONS DO NOT ENCOMPASS ACTIVITIES OF NON-U.S. PERSONS. THEREFORE, INTRODUCTION OF REQUIREMENTS BY IRAQI GOVERNMENT OR

OTHER IRAQI PURCHASERS THAT GOODS OR SERVICES BE DELIVERED IN COUNTRY WITH RISK OF NON-DELIVERY BORNE BY FOREIGN SUPPLIER WOULD NOT FALL UNDER JURISDICTION OF LAW OR EAA REGULATIONS. FROM PERSPECTIVE OF U.S. SUPPLIER, ACCEPTANCE OF RISK OF LOSS CLAUSE DOES NOT, IN AND OF ITSELF, CONSTITUTE REFUSAL TO DO BUSINESS WITH ANY OTHER PERSON.

2. REF (B) CORRECTLY INTERPRETS EAA REGULATIONS AS PERMITTING U.S. PERSON TO AGREE TO PRIMARY BOYCOTT CONDITION PROHIBITING SHIPMENT TO BOYCOTTING COUNTRY OF GOODS ORIGINATING IN BOYCOTTED COUNTRY. CERTIFICATION THAT "GOODS WILL BE SUPPLIED IN ACCORDANCE WITH THE TERMS OF THE CONTRACT", WHERE REQUIRED IN LETTER OF CREDIT LIMITED OFFICIAL USE

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PAGE 04 STATE 097353

PURSUANT TO BASIC CONTRACT CONTAINING SUCH PRIMARY BOYCOTT AGREEMENT, IS NOT PROHIBITED BY EAA REGULATIONS. USINT MAY SO INFORM GOI IN RESPONSE TO DIRECT QUESTION. POST CAUTIONED, HOWEVER, THAT PER GUIDANCE REF (D), IT MAY

NOT ENCOURAGE GOI ADOPTION OF SUCH PROCEDURE AS SUBSTITUTE FOR NEGATIVE CERTIFICATE OF ORIGIN REQUIREMENTS. DESIRED ALTERNATIVE WHICH USINT SHOULD ENCOURAGE ON GOI IS IRAQI ADOPTION OF POSITIVE CERTIFICATE OF ORIGIN.

3. RE "ELIGIBLE TO ENTER IRAQI WATERS" SHIPPING CLAUSE DISCUSSED PARA 3 REF (A), GUIDANCE WILL BE FORTHCOMING.

4. DEPARTMENT HAS POUCHED 20 ADDITIONAL COPIES OF EAA REGULATIONS PER USINT REQUEST. CHRISTOPHER

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Message Attributes

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Copy: SINGLE
Draft Date: 15 apr 1978
Decaption Date: 01 jan 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 20 Mar 2014
Disposition Event:
Disposition History: n/a
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Litigation Codes:
Litigation History:
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